

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KEVIN D. SUTTON,

Petitioner,

v.

WARDEN LeGRAND, et al.,

Respondents.

Case No. 3:15-cv-00394-MMD-WGC

ORDER

Before the Court is the petition for a writ of habeas corpus. Petitioner styles this as a petition pursuant to 28 U.S.C. § 2241, arguing that he is challenging his confinement, not his conviction or sentence. However, 28 U.S.C. § 2254 applies to all challenges to custody pursuant to a judgment of conviction of a state court, not just challenges to the validity of the conviction or the sentence. See 28 U.S.C. § 2254(a). Therefore, § 2254 governs this action.

Petitioner has challenged his custody pursuant to the same judgment of conviction in *Sutton v. Farwell*, Case No. 3:04-cv-00498-ECR-RAM. The Court denied that petition on its merits. Petitioner appealed, and the court of appeals affirmed. The petition in this action is a second or successive petition as defined in 28 U.S.C. § 2244(b). Petitioner must first obtain authorization from the court of appeals before this Court can consider his petition. 28 U.S.C. § 2244(b)(3).

Petitioner has filed a motion for appointment of counsel. The Court denies this motion because the Court is referring the action to the court of appeals.

1 It is further ordered that the Clerk of the Court shall file the petition for a writ of  
2 habeas corpus pursuant to 28 U.S.C. § 2254 and the motion for appointment of  
3 counsel.

4 It is further ordered that the motion for appointment of counsel is denied.


5 It is further ordered that the Clerk shall add Adam Paul Laxalt, Attorney General  
6 for the State of Nevada, as counsel for respondents.

7 It is further ordered that the Clerk shall electronically serve respondents with a  
8 copy of the petition and a copy of this order. No response by respondents is necessary.

9 It is further ordered that, pursuant to Circuit Rule 22-3(a), the Clerk of the Court  
10 shall refer this action to the United States Court of Appeals for the Ninth Circuit.

11 It is further ordered that the Clerk of the Court shall administratively close this  
12 action.

13 DATED THIS 30<sup>th</sup> day of October 2015.

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16 MIRANDA M. DU  
17 UNITED STATES DISTRICT JUDGE  
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